UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMANY MAGEED SHEHATTA SHAKER, **Plaintiff,** **v.** **MIDDLE EAST MEDIA RESEARCH INSTITUTE, INC., *et al.*,** **Defendants.**	**Civil Action No. 23-839 (JEB)**

MEMORANDUM OPINION

For nearly three years, *pro se* Plaintiff Romany Shaker monitored jihadi terrorist groups as a research fellow at the Middle East Media Research Institute (MEMRI). After multiple disputes with his supervisors regarding his refusal to receive the COVID-19 vaccine, insistence on working from home, and unsatisfactory pace of work, Shaker was terminated. He then sued his employer, its senior management, and his immediate supervisors for creating a hostile work environment and discriminating against him because of his Egyptian national origin and Arab ethnicity. He further alleged that he was fired in retaliation for complaints he had raised with senior management. MEMRI and Steven Stalinsky, the only Defendants served thus far, now move to dismiss certain of these claims. The Court will grant in part and deny in part their Motion.

I. Background

The Court takes the facts alleged in the Amended Complaint as true, as it must at this stage. Because Plaintiff is *pro se*, the Court also considers additional facts alleged in his

Opposition to the partial Motion to Dismiss. See Brown v. Whole Foods Mkt. Grp., Inc., 789 F.3d 146, 152 (D.C. Cir. 2015). Plaintiff, an Arab and lawful permanent resident from Egypt, was hired by MEMRI as a research fellow on May 14, 2019. See ECF No. 10 (Am. Compl.), ¶¶ 1, 7. In that role, he "analyzed terrorist jihadi groups and their Arab-language media propaganda and military trainings" and shared his insights in published reports and media appearances. Id., ¶¶ 2-4. On occasion, he also provided security-related briefings to the United States government and military. Id., ¶ 4.

Beginning in November 2019, Shaker experienced what he describes as "regular and consistent" discrimination and harassment in the workplace — largely perpetrated by his direct supervisor Steven Stalinsky, MEMRI's Executive Director. Id., ¶¶ 8-10. Shaker claims, specifically, that (1) the company denied him salary increases that his "American counterparts" received despite his "good performance"; (2) it denied him compensation for the use of his personal phone, internet, and laptop for work purposes; (3) it granted him a vacation on September 17, 2021, but forced him to work on the first day; (4) Stalinsky in particular denied him additional time off on October 21, 2020, following an appendectomy; and (5) Stalinsky instructed the firm managing MEMRI's retirement plan to deny him access to funds he had contributed to his 401k. Id., ¶¶ 11-19. Shaker alleges that his "American" colleagues did not experience similar treatment, although he does not specify their ethnic background. Id., ¶¶ 11, 14, 18.

This conduct continued in the month leading up to his termination in March 2022. Plaintiff, for example, learned from another supervisor, Samah Al-Momen ("Jihad and Terrorism Threat Monitor" Director) that Stalinsky was "not happy" with his pace of work. Id., ¶¶ 4, 8, 31. But Shaker suggests that this — and other derogatory remarks casting doubt on his work ethic —

was simply a manifestation of Stalinsky's prejudice against Arabs. See ECF No. 18 (Pl. Opp.) at 8. On February 12, 2022, Al-Momen told Shaker that Stalinsky believes that "Arabs do not work" and "do not share the same professional values." Am. Compl., ¶ 33. She also told him that Stalinsky "is fixated on [him] . . . . [Even] when [Shaker is] doing great and submitting on time . . . [,] [Stalinsky] is still questioning. As if he is in a mission." Id., ¶ 34. Stalinsky "did not have the same reaction to other employees," according to Al-Momen. Id., ¶ 35. One of Shaker's colleagues, who is an American citizen of African descent, allegedly "[did] more things that should make [Stalinsky] react . . . [but] [h]e [did] not." Pl. Opp. at 8 n.7.

Plaintiff claims that he was also targeted and harassed because of an unspecified medical condition and request for COVID-19 vaccine exemption, and because of his related decision to work from home. For example, Stalinsky and MEMRI president Yigal Carmon accused him of being "vague and evasive" about his plans to receive the vaccine. See Am. Compl., ¶¶ 8, 21. On a February 25, 2022, conference call in which they both confronted Shaker about this issue, Stalinsky directed "offensive, abusive and devaluing language" at him. Id., ¶ 23. Stalinsky and Carmon also instructed him to return to the office. Id., ¶ 24. Stalinsky allegedly also said that Shaker "want[s] to stay home because [he] [doesn't] work," is "wasting everyone's time," and "bullshitting us." Id., ¶ 26.

Shaker submitted a formal complaint to Carmon on February 25, alleging that Stalinsky was harassing and discriminating against him. Id., ¶ 36. But Carmon disregarded it. Id. Plaintiff submitted another complaint to MEMRI Vice President Alberto Fernandez on March 8. Id., ¶ 38. He, too, did not respond. Id. Shaker was fired the next day. Id., ¶ 42.

On December 21, 2022, he filed a charge of discrimination with the EEOC and D.C. Office of Human Rights. See ECF No. 10-2 (EEOC Form). On January 4, 2023, he was issued a

Right-to-Sue letter. See Pl. Opp. at 1. Having left those administrative proceedings empty handed, he filed the instant suit nearly three months later. See ECF No. 1 (Compl.). Plaintiff's initial *pro se* Complaint alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Equal Pay Act, and the District of Columbia Human Rights Act (DCHRA), and he checked the "national origin" box as the only basis for discrimination. See Compl. at 4. Defendant MEMRI moved for partial dismissal. See ECF No. 7. On June 12, 2023, in lieu of responding to the motion, Plaintiff filed an untimely Amended Complaint. Eight days later, the Court nevertheless deemed the Amended Complaint filed and denied MEMRI's motion without prejudice as moot. See Minute Order of June 20, 2023.

That Complaint, which is the operative pleading here, included expanded allegations regarding Shaker's interactions with his superiors and omitted the Equal Pay Act claims. See Am. Compl. at 3. Notably, it also identified "national origin" and "race" as bases for discrimination. Id. at 4. The only Defendants who have been properly served to date — MEMRI and Stalinsky — have again moved to dismiss some, though not all, of Shaker's claims. See ECF No. 12 (Def. MTD). Service, meanwhile, is still being perfected on the other individual Defendants. See Minute Order of July 31, 2023 (directing USMS to serve).

II. Legal Standard

Rule 12(b)(6) provides for the dismissal of an action where a complaint fails "to state a claim upon which relief can be granted." In evaluating a defendant's motion to dismiss, a court must "treat the complaint's factual allegations as true . . . and must grant plaintiff 'the benefit of all inferences that can be derived from the facts alleged.'" Sparrow v. United Air Lines, Inc., 216 F.3d 1111, 1113 (D.C. Cir. 2000) (quoting Schuler v. United States, 617 F.2d 605, 608 (D.C.

Cir. 1979)) (citation omitted); see also Jerome Stevens Pharms., Inc. v. FDA, 402 F.3d 1249, 1250 (D.C. Cir. 2005).

Although "detailed factual allegations" are not necessary to withstand a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff must put forth "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. The court need not accept as true "a legal conclusion couched as a factual allegation," nor an inference unsupported by the facts set forth in the complaint. Trudeau v. Fed. Trade Comm'n, 456 F.3d 178, 193 (D.C. Cir. 2006) (quoting Papasan v. Allain, 478 U.S. 265, 286 (1986) (internal quotation marks omitted)). For a plaintiff to survive a 12(b)(6) motion, the facts alleged in the complaint "must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555–56 (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

III. Analysis

Although Shaker's Complaint is vague and does not arrange his allegations into specific, distinguishable counts, the Court discerns the following claims: (1) race and national-origin discrimination, hostile work environment, and retaliation under Section 1981; (2) the same under Title VII; and (3) the same under the DCHRA. Defendants have moved to dismiss the § 1981 cause of action, the race-discrimination claims (plus any individual claims against Stalinsky) under Title VII, and the race-discrimination claims under the DCHRA. The Court looks at each statute separately.

A. Section 1981

Defendants first argue that Shaker's § 1981 claims cannot stand because they "are based exclusively on . . . national origin discrimination," whereas the statute prohibits only race discrimination. See Def. MTD at 5. Defendants are correct that this statute, unlike Title VII, does not prohibit discrimination on the basis of national origin. See Ayissi-Etoh v. Fannie Mae, 712 F.3d 572, 576 n.1 (D.C. Cir. 2013). To the extent that Plaintiff relies on such a theory, it cannot proceed.

This does not mean, however, that he has stated no claim for relief under § 1981. Plaintiff clearly also alleges that Stalinsky discriminated against him on the basis of his race. Specifically, he claims that Stalinsky believes that "Arabs do not work" and "do not share the same professional values." Am. Compl., ¶ 33. He has identified himself as Arab, id., ¶ 1, and has accused Stalinsky of making "stereotypical assumptions" about his willingness to work, consistent with those views. Id., ¶ 26. This is enough to allege race discrimination, as distinct from national-origin discrimination. See Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 613 (1987) ("If respondent on remand can prove that he was subjected to intentional discrimination based on the fact that he was born an Arab . . . [,] he will have made out a case under § 1981.").

Defendants' attempt to link this case to Ndondji v. InterPark, Inc., 768 F. Supp. 2d 263 (D.D.C. 2011), bears no fruit. A district court there dismissed the plaintiff's § 1981 discrimination claims as principally based on his Angolan national origin, rather than his race. In that case, "nearly all" of the plaintiff's claims alleged that he was discriminated against for being a "foreign national," and he made "no factual allegations demonstrating that his race, ancestry, or ethnic characteristics were the reason for any mistreatment." Id. at 273-75. By contrast, here, in addition to alleging that his supervisor harbored prejudicial views toward people of Arab descent,

Shaker explicitly states that his "Arab ethnicity . . . was at least a motivating factor" in his termination. See Am. Compl., ¶ 49. This is sufficient.

B. Title VII

Next up is Title VII. As a preliminary matter, the Court agrees that Plaintiff may not sustain any individual claims against Stalinsky. Because Title VII prohibits discrimination by "an employer," 42 U.S.C. § 2000e-2(a), individuals may not be sued "in their personal capacities." Webster v. Spencer, 318 F. Supp. 3d 313, 317 (D.D.C. 2018) (internal citation omitted). The Title VII claims against Stalinsky must therefore be dismissed, as Plaintiff himself appears to concede. See Pl. Opp. at 14 ("Plaintiff does not intend to bring a claim under Title VII against Defendant Steven Stalinsky.").

Defendants' other arguments are less convincing. First, they suggest that Shaker failed to exhaust administrative remedies with respect to his race-discrimination claim under Title VII — that he "did not raise even the slightest suggestion of race discrimination" in his EEOC Charge of Discrimination. See Def. MTD at 7. Defendants are mistaken. It is true that to exhaust administrative remedies, a victim of employment discrimination under Title VII must first file an administrative charge with the EEOC setting forth the alleged violations. See Park v. Howard Univ., 71 F.3d 904, 907 (D.C. Cir. 1995). "Only after the EEOC has notified the aggrieved person of its decision to dismiss or its inability to bring a civil action within the requisite time period can that person bring a civil action herself." Id. Shaker's charge clearly states, "I believe I was discriminated against because of my National Origin (Egypt) and Arab ethnicity." EEOC Form (emphasis added). It also repeats the allegation that Stalinsky said, "Arabs don't work." Id. Assuming that "Arab" is a race under Title VII (a point Defendants do not contest), this suffices as an allegation of race discrimination and thus exhausts the claim.

A closer question would be whether each of the discrete discriminatory acts alleged in the Amended Complaint has been exhausted. See Ferguson v. Washington Metro. Area Transit Auth., 630 F. Supp. 3d 96, 110 (D.D.C. 2022) ("[A] Title VII plaintiff is required to exhaust his or her administrative remedies with respect to each discrete allegedly discriminatory or retaliatory act.") (internal citation omitted). The Charge, for example, does not allege that Shaker was denied compensation for the personal use of his phone and laptop or instructed to stop working from home, as Plaintiff raises in his Complaint. Compare EEOC Form with Am. Compl., ¶¶ 18-19. The Court, however, declines to consider arguments Defendants have not raised.

In addition to lack of exhaustion, Defendants assert that Shaker has not sufficiently stated a claim for race discrimination under Title VII. To do so, a plaintiff must allege that: (1) he suffered an "adverse employment action" — that is, a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits"; and (2) the adverse action "was the result of plaintiff's race." Briscoe v. Kerry, 111 F. Supp. 3d 46, 57 (D.D.C. 2015) (internal citations and quotation marks omitted). Just as with § 1981, Defendants dispute that Plaintiff has alleged any facts indicating race discrimination (as opposed to national-origin discrimination). This position founders for the reasons stated earlier. Plaintiff has clearly alleged that Stalinsky held prejudicial attitudes toward Arabs, and that his views resulted in something of a vendetta against Shaker. That amounts to a sufficient accusation of discrimination on the basis of Plaintiff's Arab identity. And Defendants provide no reason why this would not amount to a form of race discrimination under Title VII. See Vill. of Freeport v.

Barrella, 814 F.3d 594, 607 (2d Cir. 2016) (ruling that "discrimination based on ethnicity, including Hispanicity or lack thereof, constitutes racial discrimination under Title VII").

C. DCHRA

Defendants raise the same arguments with respect to the DCHRA as they did with Title VII. Discrimination claims under the DCHRA "are analyzed in the same manner as such claims arising under Title VII." Ndondji, 768 F. Supp. 2d at 286. Defendants' contentions regarding the DCHRA thus meet the same fate.

IV. Conclusion

For the foregoing reasons, the Court will grant in part and deny in part Defendants' Motion to Dismiss. It will dismiss without prejudice Plaintiff's claim for discrimination based on national origin under § 1981 and all individual claims against Stalinsky under Title VII. A separate Order consistent with this Opinion will be issued this day.

/s/ *James E. Boasberg*
JAMES E. BOASBERG
Chief Judge

Date: August 11, 2023